

United States Court of Appeals  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 09-5399

September Term 2011

1:05-cv-00036-GK

Filed On: September 22, 2011

Securities and Exchange Commission,

Appellee

v.

Charles Johnson, Jr.,

Appellee

Chris Benyo,

Appellant

Michael Kennedy, et al.,

Appellees

**BEFORE:** Sentelle, Chief Judge, and Ginsburg and Kavanaugh, Circuit  
Judges

**ORDER**

Upon consideration of the petition for rehearing filed by appellee on August 12, 2011, and the response thereto, it is

**ORDERED** that the petition be denied. It is

**FURTHER ORDERED**, on the court's own motion, that the opinion issued June 28, 2011, be amended as follows:

Slip Op. p. 11, first full paragraph, beginning at line 7, delete the following:

“Although we noted there in a dictum that none of the parties had been prejudiced by the error, *id.* at 30, we actually held objections to venue must be “timely and sufficient” and no party had made and preserved that objection, *id.* at 31; see *Freeman v. Bee Mach. Co.*, 319 U.S. 448, 453 (1943) (venue must be “seasonably asserted”).”

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And insert in lieu thereof:

“We noted there in a dictum that none of the parties had been prejudiced by the error, *id.* at 30: not the plaintiffs, because they had failed to make and preserve a timely objection to venue, and not the Government, because we ruled in its favor on the merits of its appeal. Here, as we have seen, Benyo preserved his objection to venue at every opportunity and the error in venue would be “harmless” to him, in the sense in which we used that term in *Whittier*, only if we were also to rule in his favor on the merits.”

## Per Curiam

**FOR THE COURT:**  
Mark J. Langer, Clerk

BY: /s/  
Jennifer M. Clark  
Deputy Clerk